

SECOND REGULAR SESSION

HOUSE BILL NO. 2166

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCOTT.

Read 1st time March 13, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

5021L.02I

AN ACT

To amend chapter 288, RSMo, by adding thereto one new section relating to unemployment reimbursement for Indian tribes in compliance with federal mandate.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 288, RSMo, is amended by adding thereto one new section, to be
2 known as section 288.037, to read as follows:

**288.037. 1. The term "employer" shall include any Indian tribe for which service
2 in employment as defined in section 288.034 is performed.**

**3 2. The term "employment" shall include service performed in the employ of an
4 Indian tribe, as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA),
5 provided such service is excluded from "employment" as defined in FUTA solely by reason
6 of Section 3306(c)(7), FUTA, and is not otherwise excluded from "employment" under this
7 chapter. For purposes of this section, the exclusions from employment in subsection 9 of
8 section 288.034 shall be applicable to services performed in the employ of an Indian tribe.**

**9 3. Benefits based on service in employment defined in this section shall be payable
10 in the same amount, on the same terms, and subject to the same conditions as benefits
11 payable on the basis of other service subject to this chapter. The provisions of subsection
12 3 of section 288.040 pertaining to services performed at an educational institution while in
13 the employ of an "educational service agency" shall apply to services performed in an
14 educational institution or educational service agency wholly owned and operated by an
15 Indian tribe or tribal unit.**

**16 4. (1) Indian tribes or tribal units, including subdivisions, subsidiaries, or business
17 enterprises wholly owned by such Indian tribes, subject to this chapter shall pay
18 contributions under the same terms and conditions as all other subject employers, unless**

19 they elect to pay into the state unemployment fund amounts equal to the amount of benefits
20 attributable to service in the employ of the Indian tribe. An Indian tribe and all tribal
21 units of such Indian tribe shall be jointly and severally liable for any and all contributions,
22 payments in lieu of contributions, interest, penalties, and surcharges owed by the Indian
23 tribe and all tribal units of such Indian tribe.

24 (2) Indian tribes electing to make payments in lieu of contributions must make such
25 election in the same manner and under the same conditions as provided in subsection 3 of
26 section 288.090 pertaining to state and local governments and nonprofit organizations
27 subject to this chapter. Indian tribes will determine if reimbursement for benefits paid will
28 be elected by the tribe as a whole, by individual tribal units, or by combinations of
29 individual tribal units. Termination of an Indian tribe's coverage pursuant to subdivision
30 (5) of this subsection shall terminate the election of such Indian tribe and any tribal units
31 of such Indian tribe to make payments in lieu of contributions.

32 (3) Indian tribes or tribal units will be billed for the full amount of benefits
33 attributable to service in the employ of the Indian tribe or tribal unit on the same schedule
34 as other employing units that have elected to make payments in lieu of contributions.

35 (4) Any Indian tribe or tribal unit that elects to become liable for payments in lieu
36 of contributions shall be required, prior to the effective date of its election, to post with the
37 division a surety bond issued by a corporate surety authorized to do business in Missouri
38 in an amount equivalent to the contributions or payments in lieu of contributions for which
39 the Indian tribe or tribal unit was liable in the last calendar year in which it accrued
40 contributions or payments in lieu of contributions, or one hundred thousand dollars,
41 whichever amount is the greater, to ensure prompt payment of contributions or payments
42 in lieu of contributions, interest, penalties, and surcharges for which the Indian tribe or
43 tribal unit may be, or becomes, jointly and severally liable pursuant to this chapter.

44 (5) Failure of the Indian tribe or tribal unit to maintain the required surety bond,
45 including the posting of an additional surety bond or a replacement surety bond within
46 ninety days of being directed by the division, will cause services performed for such Indian
47 tribe to not be treated as "employment" for purposes of subsection 2 of this section.

48 (6) The director may determine that any Indian tribe that loses coverage under
49 subdivision (5) of this subsection, may have services performed for such tribe again
50 included as "employment" for purposes of subsection 2 of this section if all contributions,
51 payments in lieu of contributions, penalties, and interest have been paid. Upon
52 reinstatement of coverage under this subdivision, an Indian tribe or any tribal unit may
53 elect, in accordance with the provisions of this subsection, to make payments in lieu of
54 contributions.

55 (7) If an Indian tribe fails to maintain the required surety bond by posting an
56 additional surety bond or a replacement surety bond within ninety days of being directed
57 by the division, the director will immediately notify the United States Internal Revenue
58 Service and the United States Department of Labor.

59 (8) Notices of surety bond deficiency to Indian tribes or their tribal units shall
60 include information that failure to post an additional surety bond or a replacement surety
61 bond within the prescribed time frame:

62 (a) Will cause the Indian tribe to be liable for taxes under FUTA;

63 (b) Will cause the Indian tribe to be excepted from the definition of "employer,"
64 as provided in subsection 1 of this section, and services in the employ of the Indian tribe,
65 as provided in subsection 2 of this section, to be excepted from "employment".

66 5. (1) Failure of the Indian tribe or tribal unit to make required payments,
67 including assessments of interest and penalty, within ninety days of receipt of the bill will
68 cause services performed for such Indian tribe to not be treated as "employment" for
69 purposes of subsection 2 of this section.

70 (2) The director may determine that any Indian tribe that loses coverage under
71 subdivision (1) of this subsection, may have services performed for such tribe again
72 included as "employment" for purposes of subsection 2 of this section if all contributions,
73 payments in lieu of contributions, penalties, and interest have been paid.

74 (3) If an Indian tribe fails to make payments required under this section, including
75 assessments of interest and penalty, within ninety days of a final notice of delinquency, the
76 director will immediately notify the United States Internal Revenue Service and the United
77 States Department of Labor.

78 6. Notices of payment and reporting delinquency to Indian tribes or their tribal
79 units shall include information that failure to make full payment within the prescribed
80 time frame:

81 (1) Will cause the Indian tribe to be liable for taxes under FUTA;

82 (2) Will cause the Indian tribe to be excepted from the definition of "employer",
83 as provided in subsection 1 of this section, and services in the employ of the Indian tribe,
84 as provided in subsection 2 of this section, to be excepted from "employment".

85 7. Extended benefits paid that are attributable to service in the employ of an Indian
86 tribe and not reimbursed by the federal government shall be financed in their entirety by
87 such Indian tribe.